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Paper No. 6

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OFFICE OF PETITIONS

In re Application of
John M. Airey et al.
Application No. 09/614,363
Filed: July 12, 2000
For: Display System having Floating Point
Rasterization and Floating Point
Framebuffering

:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
:

This is in response to the petition filed April 2, 2001, pursuant to the provisions of rule 37 CFR 1.47(b), which is being treated pursuant to the provisions of 37 CFR 1.47(a).¹

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 1.47(a)," and should only address the deficiencies noted below. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor.

The petition lacks item (1) set forth above.

¹The petition under 37 CFR 1.47 was filed on April 2, 2001 more than two months past the January 15, 2001 due date for submitting a reply to the decision mailed November 15, 2000. Therefore, in view of the authorization to charge any additional fees required, the amount of \$890 for a three month extension of time will be charged to petitioner's deposit account.

As to item (1), Rule 47 applicant has failed to establish that the nonsigning inventors refuse to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings), such that the declaration can be accepted under 37 CFR 1.47. In this regard, the statement of facts indicates that the declaration and assignment forms were mailed to the nonsigning inventors; however, no evidence has been presented to show that the complete application papers were presented to the nonsigning inventors. Unless the nonsigning inventors were presented with a complete copy of the application papers (specification, claims, and drawings), they could not attest that they have "reviewed and understand the application papers" and therefore could not sign the declaration which they were given. Accordingly, petitioner failed to show or provide proof that the inventors have refused to sign the declaration. See M.P.E.P. 409.03(d). Petitioner should show that a complete copy of the application papers was presented to the two non-signing inventors, but that they did not respond to the request that they sign the declaration in order to show that the inventors have refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

If the inventors cannot be reached, petitioner should send a complete copy of the application papers to the last known addresses of the non-signing inventors with a request that they sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned, and other attempts to locate the inventors, through the Internet, e-mail or telephone) continue to fail, then petitioner will have established that the inventors cannot be reached.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the documents(s) evidencing that refusal must be made part of the affidavit or declaration.

Petitioner should note that in view of the abandonment of application no. 09/098,041 on September 8, 1998, if petitioner desires to claim benefits under 35 U.S.C. 120 in application no. 09/614,363 and maintain copendency with prior application no. 09/098,041, petitioner would have to file a petition to revive application 09/098,041.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Latrice Bond.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
 Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 Crystal Plaza Four, Suite 3C23
 2201 South Clark Place
 Arlington, VA 22202

Telephone inquiries related to this decision should be directed to Latrice Bond at
(703) 308-6911.

Latrice Bond
Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances Hicks
Frances Hicks
Lead Petitions Examiner
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